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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION 2

THE PEOPLE,

Plaintiff and Respondent,

v.

MARLON RIVERA,

Defendant and Appellant.

A142804

(San Francisco County  
Super. Ct. No. 218652-02)

Defendant Marlon Rivera (defendant) was convicted, along with codefendant Rony Aguilera, of the first degree murder of 14-year-old Ivan Miranda (Ivan) and other crimes.<sup>1</sup> The trial court ordered defendant and Aguilera to pay restitution, including \$61,382 to Ivan's mother, Maria Tavira. Defendant appeals from the restitution order, contending the trial court abused its discretion because the amount it awarded to Ms. Tavira for increased rent payments was unsupported by the record. We disagree, and affirm.

**BACKGROUND**

On August 28, 2013, the Victim Compensation & Government Claims Board filed a request for restitution on behalf of Ms. Tavira, Rodrigo Miranda (Ivan's father), and others. In support of the restitution request, the district attorney submitted an itemization of the amounts requested, along with supporting documentation. Specifically, the district attorney sought the following: \$24,579.35 payable to the Victim Compensation Board

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<sup>1</sup> In a separate opinion, we recently affirmed the convictions. (*People v. Aguilera* (Oct. 2, 2015, A140128) [nonpub. opn.] )

for funeral and mental health treatment expenses incurred by Ms. Tavira, Mr. Miranda, and others; \$85,764.25 payable to Ms. Tavira for lost wages and expenses; and \$15,456.00 payable to Mr. Miranda for lost wages. Ms. Tavira's lost wages and expenses were further itemized as follows: \$37,480 for lost wages; \$3,582 for transportation; \$24,690 for rent; \$2,200 for childcare; and \$1,972.85 for telephone bills.<sup>2</sup>

A restitution hearing was held on November 25, 2013. Because defendant challenges only the restitution awarded to Ms. Tavira, we detail only the evidence relevant to her request, which evidence was as follows:

Before her son's death, Ms. Tavira was very hard working and had two jobs. After her son's death in 2008, "everything changed." Due to "depression and psychological damage," she lost three years of work. Ms. Tavira also had to borrow from others to pay her telephone bill, since she was no longer able to afford it on her own.

After Ivan's death, Ms. Tavira and her children relocated because it was too traumatic for them to remain in the house where they had lived before Ivan's death: "[T]hat house brought [back] many memories to me and I had to move out of there. My children were suffering from panic attacks and I was also having them." She had been paying \$850 per month in rent, but after she moved her monthly rent increased \$550 to \$1,400. She and her children stayed in that house for one year, but the rent was too expensive, so they moved to a studio apartment, where Ms. Tavira paid \$950 per month.

Ms. Tavira also incurred transportation expenses because even though the family had moved out of San Francisco, Ms. Tavira had to return to San Francisco with her children for therapy and "other things."

At the conclusion of the hearing, the court awarded Ms. Tavira \$61,382, \$7,800 of which was for rent: "12 months, at \$650, as a differential for the first year."

An order to that effect was entered on November 26, 2013.

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<sup>2</sup> These amounts total \$69,924.85, not the \$85,764.25 requested. A declaration submitted by Ms. Tavira also included \$15,840 for "[a]limeto [*sic*] y mantenimiento del hogar"—food and home maintenance—that was apparently omitted from the district attorney's itemized list of expenses Ms. Tavira incurred as a result of the crime.

This appeal followed.

## DISCUSSION

Defendant contends that the trial court abused its discretion in awarding Ms. Tavira \$7,800 to compensate her for her increased rent payments incurred as a result of moving out of the home where the family lived before Ivan's death. This is so, he reasons, because the court expressly stated it was awarding the rent "differential for the first year" after Ivan's death, which was \$550 per month, but the court erroneously calculated it as "12 months, at \$650." He thus concludes that Ms. Tavira was awarded a windfall of \$100 per month, or \$1,200. His argument lacks merit.

"[I]n every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order . . . ." (Pen. Code, § 1202.4, subd. (f).) The purpose of restitution is to "fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct order . . . ." (*Id.*, subd. (f)(3); see also *People v. Keichler* (2005) 129 Cal.App.4th 1039, 1045; Cal. Const., art. I, § 28.)

We review defendant's claim for an abuse of discretion. (*People v. Keichler*, *supra*, 129 Cal.App.4th at p. 1045.) "When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court. [Citation.]" (*People v. Dalvito* (1997) 56 Cal.App.4th 557, 562; accord, *People v. Hudson* (2003) 113 Cal.App.4th 924, 927; see also *People v. Carbajal* (1995) 10 Cal.4th 1114, 1125; see also *People v. Chappelone* (2010) 183 Cal.App.4th 1159, 1172–1173 [trial court must " 'use a rational method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious.' "]; *People v. Thygesen* (1999) 69 Cal.App.4th 988, 992.)

Here, Ms. Tavira's uncontested testimony established that prior to Ivan's death, the family lived in a home where she paid \$850 per month. After relocating, the rent increased to \$1,400 per month, an increase of \$550. They remained in that home for one year, and then relocated to a less expensive apartment where the rent was \$950 per

month, which was still a \$100-per-month increase over the rent Ms. Tavira was paying before relocating her family. In other words, for the first year following Ivan's death, Ms. Tavira paid an increase of \$550 per month, or \$6,600; for the second year following Ivan's death, she paid an increase of \$100 per month, or \$1,200. Thus, over the two years, Ms. Tavira incurred an additional \$7,800 in rent—the amount awarded by the court. As Ms. Tavira was awarded the precise amount she incurred over the course of two years, it cannot be said she received a windfall.

#### **DISPOSITION**

The restitution order is affirmed.

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Richman, Acting P.J.

We concur:

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Stewart, J.

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Miller, J.

A142804; *The People v. Rivera*